

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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AMADOU KONTEYE,

Plaintiff,

-against-

NEW YORK CITY DEPARTMENT OF EDUCATION;  
JOSEPH D. GATES,

Defendants.

**AFFIDAVIT OF RICHARD  
BENVISTO IN SUPPORT OF  
DEFENDANTS' MOTION  
FOR SUMMARY JUDGMENT**

17 CV 2876 (GBD) (RL)

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STATE OF NEW YORK     )  
                                  ) SS.:  
COUNTY OF NEW YORK    )

**RICHARD BENVISTO** being duly sworn, deposes and says:

1. I am employed by the Board of Education of the City School District of the City of New York, which operates as the New York City Department of Education ("DOE"). My position within the DOE is Director of Pedagogic Payroll, Payroll Administration. I have served in this capacity for the DOE since February 1, 2000.

2. As Director of Pedagogic Payroll, I am responsible for, among other things, the payroll operations of the Per Diem and the Per Session payrolls. My additional responsibilities include all aspects of the Pedagogic Exception Payroll for regularly appointed pedagogues for Timekeeping, Shortage License Area, Office of Adult/Continuing Education, Public Schools Athletic League, and payments concerning all United Federation of Teachers ("UFT") Grievances, including arbitration awards, stipulations, and contractual entitlements. I lastly interact with the divisions of Human Resources, Financial Systems and Business

Operations, Office of Labor Relations, the NYC Office of Payroll Administration, and the Financial Information Services Agency, and liaise with unions in resolving disputes.

3. Pedagogic Payroll at large is responsible for, among other things, Per Diem and Per Session payroll administration, Timekeeping, and UFT Grievances. Pedagogic Payroll also is in daily contact with the other payroll units: Leaves, Certificates/Longevity, Termination, Electronic Funds Transfer (EFT) and the Council of School Supervisors & Administrators (CSA) Supervisory.

4. I submit this affidavit in support of Defendants' motion for summary judgment. This affidavit is based on my personal knowledge as well as the books and records maintained by the DOE.

5. The DOE maintains regulations which are referred to as Regulations of the Chancellor ("Chancellor's Regulation").

6. The C-500 series of the Chancellor's Regulations cover per diem service.

7. Specifically, Chancellor's Regulation C-515 provides that occasional per diem substitutes are individuals who replace an absented teacher<sup>1</sup> for less than thirty consecutive days. *See* Chancellor's Regulation C-515, annexed hereto as Exhibit ("Ex.") "1," ¶ 1.

8. C-515 also provides that occasional per diem substitutes are paid according to a flat daily rate that is contractually negotiated for between the DOE and the United Federation of Teachers. *See id.* at ¶ 2.

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<sup>1</sup> Per diem substitutes may also be used to cover vacancies. A vacancy may be either unencumbered or encumbered. An encumbered vacancy refers to a position for which there is an appointed teacher out on an extended leave. An unencumbered vacancy typically refers to a position at a school that is vacant due to a retirement, resignation, or termination of an appointed teacher.

9. The rates of per diem pay represented in C-515 are now outdated. Since 2008 through 2018, per diems are paid according to the salary schedules established by the 2009-2018 collective bargaining agreement between the DOE and the United Federation of teachers. A copy of the salary schedules delineated in the 2009-2018 collective bargaining agreement for occasional per diem employees is attached hereto as Ex. “2.”

10. Occasional per diem employees are sometimes referred to as “O-status.” O-status is a payroll status.

11. Chancellor’s Regulation C-520 details the different payroll statuses per diems may be eligible for based on the service they provide. *See* Chancellor’s Regulation C-520, annexed hereto as Ex. “3.”

12. For example, paragraph 1-a of Regulation C-520 details what is known as long-term per diem service. *See id.* at ¶ 1-a.

13. Long-term per diem service is commonly referred to as “Z-status.” Z-status is a payroll status.

14. A per diem attains Z-status when the per diem works in the same position to cover the same absented teacher for thirty or more consecutive days without a break in service. *See id.* at ¶ 1-a.

15. However, if the per diem works covering a different absented teacher or a different subject area before completing thirty consecutive days in the same assignment, the per diem is not eligible for Z-status and will remain on O-status. *See e.g.*, Ex. “3,” ¶ 2-a, at Example B and C.

16. A long-term per diem is paid at 1/200th of the salary step (up to step 4A including differentials) that would be entitled on a full-time basis, instead of the occasional daily rate, or O-status. *See id.* at ¶ 1-a.

17. Once the long-term per diem concludes covering the long-term vacancy, the individual reverts back to an occasional per diem substitute. *See id.* at ¶ 3.

18. Accordingly, the long-term per diem substitute that reverts back to an occasional per diem also reverts back to the corresponding payroll status used for occasional per diem substitutes, which is O-status.

19. Another payroll status per diems may be eligible for based on their service is called “Q-status.” Service that would qualify a per diem for Q-status is detailed in Chancellor’s Regulation C-525. A copy of the Regulation C-525 is attached hereto as Ex. “4.”

20. A per diem may be eligible for Q-status if they work covering a vacancy for two or more months until the end of the academic year. *See Ex. “4,”* ¶ 1.

21. Individuals who are eligible for Q-status are paid as if on an annual salary. The annual rate the Q-status substitute would receive is in accordance with contractually negotiated salary schedules, but may not exceed the rate established for Step 4A. *See id.* at ¶ 2.

22. When the long-term assignment that entitled a per diem substitute to Q-status concludes, the individual will revert back to an occasional per diem substitute with O-status. *See id.* at ¶ 4.

23. Many times, a per diem will not automatically be coded as Q-status in the DOE payroll systems. Rather, a substitute who believes they are eligible for Q-status must initiate a grievance through their union to receive Q-status. Such grievances are commonly referred to as “O to Q” grievances.

24. Upon request of the Law Department, I reviewed Plaintiff's O to Q grievance that was filed on December 15, 2015. A copy of the December 15, 2016 grievance is attached hereto as Ex. "5."

25. By the decision dated March 22, 2016, I understand that Plaintiff's grievance was denied in part as untimely, and sustained in part for the time period of September 8, 2015 to February 12, 2016. A copy of the grievance decision dated March 22, 2016 is attached hereto as Ex. "6."

26. I then searched the DOE's pedagogic payroll systems for the calculations of Plaintiff's retroactive Q-status pay from September 8, 2015 to February 12, 2016. A copy of the calculation spreadsheets gathered from DOE systems is attached hereto as Ex. "7."

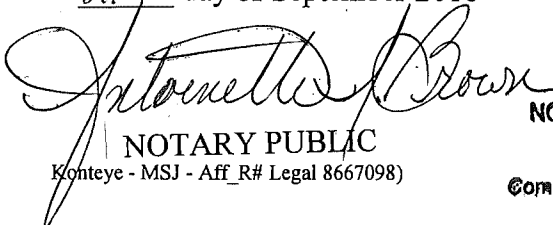
27. Upon review of the calculations, I understand that Plaintiff was paid the difference between the compensation he received from September 8, 2015 to February 12, 2016 as an occasional per diem on O-status, and the compensation he would have received during the same time frame on Q-status as a regular substitute. *See id.*

28. The total Plaintiff was paid according to DOE systems as a result of his December 15, 2015 grievance is \$14,933.91. *See id.*

29. The rate of pay Plaintiff received in 2012, 2013, 2014, 2015, and 2016, is consistent with the contractually negotiated salary schedules provided for in the 2009-2018 collective bargaining agreement between the DOE and the United Federation of Teachers. *See Ex. "2."*

Dated: New York, New York  
September 21, 2018

Sworn to before me this  
21<sup>st</sup> day of September 2018

  
NOTARY PUBLIC  
Konteye - MSJ - Aff\_R# Legal 8667098)

  
RICHARD BENVISTO

ANTOINETTE J. BROWN  
NOTARY PUBLIC, State of New York  
No. 01080063620  
Qualified in Kings County  
Commission Expires September 4, 2021

# EXHIBIT “1”



BOARD OF EDUCATION OF THE CITY OF NEW YORK

RUDOLPH F. CREW, Ed. D., *Chancellor*

OFFICE OF THE CHANCELLOR  
110 LIVINGSTON STREET - BROOKLYN, NY 11201

November 12, 1999

CHANCELLOR'S REGULATION, PERSONNEL VOLUME - UPDATE #5, 1999-2000

TO: ALL SUPERINTENDENTS, DEPUTY CHANCELLORS, CHIEF  
EXECUTIVES, EXECUTIVE DIRECTORS, HEADS OF OFFICES,  
PRINCIPALS OF ALL DAY SCHOOLS, UFT REPRESENTATIVES

FROM: Rudolph F. Crew, Chancellor *RFC*

SUBJECT: OCCASIONAL PER DIEM SUBSTITUTE PAY

Enclosed is an update of Chancellor's Regulation entitled, "Occasional Per Diem Substitute Pay" which is to be included in the Chancellor's Regulations, Personnel Volume.

Please place this regulation in your copy of the Personnel Volume. The following table will aid you in placing the new pages:

<u>Subject</u>	<u>Regulation Number</u>	<u>New Page Numbers</u>	<u>Date Issued</u>	<u>Substitute for Old Pages</u>	<u>Issued</u>
Occasional Per Diem Substitute Pay	C-515	1 to 1	11/12/99	1 to 1	7/1/97

RFC:kms  
Enclosure



CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK

# Regulation of the Chancellor

Category: PEDAGOGICAL PERSONNEL  
Subject: OCCASIONAL PER DIEM SUBSTITUTE PAY

No.: C-515  
Page: 1 of 1  
Issued: 11/12/99

## SUMMARY

This regulation sets forth pay entitlement of occasional per diem substitutes who are paid on the per diem payroll.

### 1. Occasional Per Diem Substitute Service

An occasional per diem substitute is one who replaces a particular absent employee for less than thirty consecutive work days. After the close of each month, payment is made at the appropriate flat rate for each day of actual and personal service during the month.

### 2. Flat Rate Per Diem Schedule

The daily rate indicated is prorated for service of less than a full day.

<u>License Title</u>	<u>Daily Rate</u>
Teacher	106.48
School Psychologist	106.48
School Social Worker	106.48
School Secretary	79.44
Laboratory Specialist	79.44

Note: The daily rate is established by the contract with the United Federation of Teachers.

### 3. Vacation and Salary Credit

No vacation time accrues by virtue of occasional per diem service. Occasional per diem service rendered after August 31, 1975, is not creditable toward salary increment as a substitute. However, upon regular appointment, such service shall be creditable for placement on the salary schedule as provided by Regulation C-535.

# EXHIBIT “2”

## Salary Schedules for 2009-2018 Contract

### Other Rates

	5/19/08	5/1/2013	5/1/2014	5/1/2015
<b>Occasional per diem</b>				
Teacher	154.97	156.52	158.08	162.86
School Secretary	115.61	116.77	117.94	121.50

### Other Rates

	5/1/2016	5/1/2017	5/1/2018	6/16/2018
<b>Occasional per diem</b>				
Teacher	168.54	176.21	179.66	185.05
School Secretary	125.74	131.46	134.04	138.06

### Per session and other rates

	5/19/08	5/1/2013	5/1/2014	5/1/2015
Teacher	41.98	42.40	42.82	44.11
School Secretary	25.87	26.13	26.39	27.19
Lab Spec	39.01	39.40	39.79	40.99
Coverage Rate	35.29	35.29	35.64	36.00
Shortage Area Rate	5,660	5,660	5,717	5,774
Daily Training Rate	40.20	40.60	41.01	42.25
Lead Teacher Differential	10,710	10,925	10,925	11,255
Staff Development Rate	19.12	19.31	19.50	20.09
Teachers Assistants	31,349	31,662	31,979	32,945

### Per session and other rates

	5/1/2016	5/1/2017	5/1/2018	6/16/2018
Teacher	45.65	47.73	48.67	50.13
School Secretary	28.14	29.42	30.00	30.90
Lab Spec	42.42	44.35	45.22	46.58
Coverage Rate	38.38	40.13	40.92	42.15
Shortage Area Rate	6,156	6,436	6,562	6,759
Daily Training Rate	43.72	45.71	46.61	48.01
Lead Teacher Differential	11,648	12,178	12,417	12,790
Staff Development Rate	20.79	21.74	22.17	22.84
Teachers Assistants	34,095	35,646	36,345	37,435

# EXHIBIT “3”



## BOARD OF EDUCATION OF THE CITY OF NEW YORK

RUDOLPH F. CREW, Ed. D., *Chancellor*

OFFICE OF THE CHANCELLOR

110 LIVINGSTON STREET - BROOKLYN, NY 11201

November 12, 1999

## CHANCELLOR'S REGULATION, PERSONNEL VOLUME - UPDATE #6, 1999-2000

TO: ALL SUPERINTENDENTS, DEPUTY CHANCELLORS, CHIEF  
EXECUTIVES, EXECUTIVE DIRECTORS, HEADS OF OFFICES,  
PRINCIPALS OF ALL DAY SCHOOLS, UFT REPRESENTATIVES

FROM: Rudolph F. Crew, Chancellor *RFC*

SUBJECT: LONG-TERM PER DIEM SUBSTITUTE PAY

Enclosed is an update of Chancellor's Regulation entitled, "**Long-Term Per Diem Substitute Pay**" which is to be included in the Chancellor's Regulations, Personnel Volume.

Please place this regulation in your copy of the Personnel Volume. The following table will aid you in placing the new pages:

<u>Subject</u>	<u>Regulation Number</u>	<u>New Page Numbers</u>	<u>Date Issued</u>	<u>Substitute for Old Pages</u>	<u>Issued</u>
Long-Term Per Diem Substitute Pay	C-520	1 to 5	11/12/99	1 to 5	7/1/97

RFC:kms  
Enclosure

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CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK

# Regulation of the Chancellor

Category: PEDAGOGICAL PERSONNEL  
Subject: LONG-TERM PER DIEM SUBSTITUTE PAY

No.: C-520  
Page: 1 of 5  
Issued: 11/12/99

This regulation sets forth the pay entitlement of long-term per diem substitutes who are paid on the per diem payroll.

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CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK

# Regulation of the Chancellor

Category: PEDAGOGICAL PERSONNEL  
 Subject: LONG-TERM PER DIEM SUBSTITUTE PAY

No.: C-520  
 Page: 2 of 5  
 Issued: 11/12/99

## 1. Long-Term Per Diem Service

### a. Full Time Service

A long-term per diem substitute is one who replaces a particular absent employee for thirty (30) or more consecutive work days. After the close of each month, payment is made at the rate of one-two hundredth (1/200) of the annual salary for each day of service. The annual salary is determined in accordance with the appropriate salary schedule but may not be higher than the level established for Step 4A.

### b. Part Time Service

A per diem substitute who serves in a regularly scheduled part-time position is paid as a long-term per diem substitute for the number of days served and is considered to have long-term per diem status from the first day of regularly scheduled part-time service. Therefore, such a substitute who serves less than five days a week on a regular basis receives the long-term salary rate without having to serve thirty days at the occasional per diem or flat rate.

## 2. Commencement of Pay Entitlement

- a. Pay as a long-term per diem substitute commences on the thirtieth consecutive work day of service replacing a particular employee. Status and entitlement are retroactive to the first day of occasional per diem service in the same position. The conditions necessary for a change from occasional to long-term status are illustrated below.

**EXAMPLE A** Ms. Jones is employed as an occasional per diem substitute to replace a teacher whose absence lasts 20 school days. Ms. Jones is compensated at the flat rate prescribed by Regulation C-515 with no other benefits.

**EXAMPLE B** Suppose the absent teacher referred to in Example A turns out to be more seriously ill than first believed and is absent 35 school days - all of them covered by Ms. Jones. For the first 29 consecutive school days, Ms. Jones would be compensated at the flat rate. When consecutive days of employment pass 29, Ms. Jones is no longer considered an occasional per diem substitute. She is to receive pay and benefits as a long-term per diem substitute for the full 35 days less any flat rate already paid.



CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK

# Regulation of the Chancellor

Category: PEDAGOGICAL PERSONNEL  
 Subject: LONG-TERM PER DIEM SUBSTITUTE PAY

No.: C-520  
 Page: 3 of 5  
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**EXAMPLE C** Ms. Jones covers 20 consecutive days of absence of one teacher in a school and without a break covers 20 consecutive days of absence of a second teacher in the same school. Ms. Jones is compensated for all 40 days at the flat rate prescribed by Regulation C-515. She covered two different absentees and neither of these coverages exceeded 29 consecutive work days.

- b. No pay is due for absences of an occasional per diem substitute which are excused by the principal for reasons that would qualify a regular substitute for non-attendance but such days do not break the consecutive sequence required for change of status from occasional to long-term per diem substitute provided twenty-nine days of service are actually completed before the change.

**EXAMPLE A** Ms. Smith is employed as an occasional per diem substitute to replace Ms. Jones whose absence actually lasts 40 consecutive work days. During the first 29 days, Ms. Smith loses 5 days because of jury duty. She does not move to long-term status on the thirtieth day of Ms. Jones' absence but on the thirty fifth day; this will be Ms. Smith's thirtieth day of service.

**EXAMPLE B** Ms. Smith is employed as an occasional per diem substitute to replace Ms. Jones whose absence actually lasts 40 consecutive work days. After 5 days, Ms. Smith loses 2 days because of an urgent, personal legal matter. Because such absence does not qualify as non-attendance, the consecutive sequence is broken. The five days of service do not count toward the required 29. A new sequence would start on the eighth day of Ms. Jones' absence and Ms. Smith would not change to long-term status until the thirty-seventh day of Ms. Jones' absence.

- c. Even though a particular vacancy exists for more than 30 days and would qualify an occasional per diem substitute for long-term status, a principal is not obligated thereby to retain that substitute for the 29 day qualifying period. Should the principal choose to do so, the services of the substitute may be terminated and another person may be engaged to cover the position. Where a vacancy continues, the per diem teacher may not be terminated solely to preclude attainment of long-term status nor may a principal retain an occasional per diem substitute in the same school but move the substitute out of a continuing vacancy in order to prevent the acquisition of long-term status.



CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK

# Regulation of the Chancellor

Category: PEDAGOGICAL PERSONNEL  
Subject: LONG-TERM PER DIEM SUBSTITUTE PAY

No.: C-520  
Page: 4 of 5  
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- d. Similarly, the assignment of a per diem substitute may not be changed within a school or terminated while the vacancy continues to the end of a term solely to preclude attainment of regular payroll or full term per diem status.

- (1) As prescribed by Regulation C-525, regular payroll status is granted to a substitute who covers an approved long-term vacancy when no salary is paid to the absent teacher from the regular budget line of the position. Normally, such status is granted in advance on the basis of the projected absence of the regularly appointed teacher and takes effect when the substitute actually commences to cover the vacancy.
- (2) Not every such absence can be foreseen. Therefore, when the essential qualifying conditions are met, even though not foreseen in time for advance approval, regular payroll status may be granted upon proper request and approval once the facts become apparent. In such cases, regular payroll status may be granted subsequent to the date on which the substitute began to cover the vacancy with a salary adjustment effective from the date the budget line was available because of the prolonged absence of the regularly appointed teacher.

**EXAMPLE** Assume a substitute was engaged on February 24 to cover a relatively short term absence. As it happened, the regularly appointed teacher's absence was prolonged beyond original projections so that, having exhausted all sick leave, the teacher was granted leave of absence without pay from April 15 through the end of the term in June. The substitute who was originally engaged as an occasional per diem and later paid as a long-term per diem would, if continuing to fill the vacancy, be entitled to regular payroll status from April 15.

### 3. Termination of Pay Entitlement

Except as otherwise provided for absence and pro rata summer vacation pay, entitlement to pay and status as a long-term per diem substitute ceases at the end of the term or sooner if service in the particular position terminates earlier than the end of the term.

- a. No pay is due for absences of a long-term per diem substitute which are excused by the principal for reasons that would qualify a regular substitute for non-attendance. If the individual is continued in the same position following such excused absence, there is no loss of long-term status. Should the individual not return or not be continued following such absence, long-term status terminates as of the last day of service before the absence.



CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK

# Regulation of the Chancellor

Category: PEDAGOGICAL PERSONNEL  
Subject: LONG-TERM PER DIEM SUBSTITUTE PAY

No.: C-520  
Page: 5 of 5  
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- b. Long-term per diem status in a school may not be transferred directly from one position to another.

**EXAMPLE** Ms. Smith is absent for 40 days and when she returns Ms. Jones begins an absence of 50 days. Ms. Brown covered all of Ms. Smith's absence and so acquired long-term status. When Ms. Smith returned, Ms. Brown's long-term status ended. If she now replaces Ms. Jones, Ms. Brown will have to complete the 29 day occasional service requirement before regaining long-term status.

#### 4. Vacation Pay Entitlement

One who completes, within a school year, 60 days of service or more for which entitled to pay at the long-term per diem substitute rate, receives pro rata summer vacation pay. Such payment is computed on the basis of one day's pay for each 20 days of service paid at the long-term per diem substitute rate. The daily rate is derived from the annual rate prescribed in subdivision 1 above. Should service during any 20 day period have been compensated at rates derived from more than one salary schedule or step, the lowest of these rates is used to determine the related day of vacation pay.

# EXHIBIT “4”

**BOARD OF EDUCATION OF THE CITY OF NEW YORK**RUDOLPH F. CREW, Ed. D., *Chancellor*OFFICE OF THE CHANCELLOR  
110 LIVINGSTON STREET - BROOKLYN, NY 11201

November 12, 1999

## CHANCELLOR'S REGULATION, PERSONNEL VOLUME - UPDATE #7, 1999-2000

TO: ALL SUPERINTENDENTS, DEPUTY CHANCELLORS, CHIEF  
EXECUTIVES, EXECUTIVE DIRECTORS, HEADS OF OFFICES,  
PRINCIPALS OF ALL DAY SCHOOLS, UFT REPRESENTATIVES

FROM: Rudolph F. Crew, Chancellor *RFC*

SUBJECT: LONG-TERM PER DIEM SUBSTITUTE ON R740 PAYROLL

Enclosed is an update of Chancellor's Regulation entitled, "Long-Term Per Diem Substitute On R740 Payroll" which is to be included in the Chancellor's Regulations, Personnel Volume.

Please place this regulation in your copy of the Personnel Volume. The following table will aid you in placing the new pages:

<u>Subject</u>	<u>Regulation Number</u>	<u>New Page Numbers</u>	<u>Date Issued</u>	<u>Substitute for Old Pages</u>	<u>Issued</u>
Long-Term Per Diem Substitute on R740 Payroll	C-525	1 to 3	11/12/99	1 to 3	7/1/97

RFC:kms  
Enclosure

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CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK

# Regulation of the Chancellor

Category: PEDAGOGICAL PERSONNEL  
 Subject: LONG-TERM PER DIEM SUBSTITUTE ON R740 PAYROLL

No.: C-525  
 Page: 1 of 3  
 Issued: 11/12/99

This regulation sets forth the pay entitlement of per diem substitutes who are paid on the regular or R740 payroll.

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CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK

# Regulation of the Chancellor

Category: PEDAGOGICAL PERSONNEL  
Subject: LONG-TERM PER DIEM SUBSTITUTE ON R740 PAYROLL

No.: C-525  
Page: 2 of 3  
Issued: 11/12/99

## 1. Long-Term Per Diem Service

A long-term per diem substitute is one who is employed to replace an absent teacher for the balance of a term subject to the following conditions:

- a. Employment must have commenced later than the fifteenth calendar day following the first day for the reporting of newly appointed teachers. (Employment starting within that fifteen day period and extending for a term would normally qualify as regular substitute service which is governed by Regulation C-510.)
- b. Employment must be for a minimum of two months.
- c. Employment must be to cover an approved long-term vacancy. For this purpose, a vacancy is a position for which no salary is being paid to the absent teacher as, for example, when the absent teacher is on leave of absence without pay, or for which other budgetary provision is being made as, for example, when the absent teacher is on sabbatical leave.

## 2. Salary and Mode of Payment

Long-term per diem substitutes are paid as if on an annual salary. The annual rate from which the monthly salary is derived is determined in accordance with the appropriate salary schedule but may not be higher than the level established for Step 4A. Payment is made in the manner prescribed by Regulation C-505.1 for regularly appointed teachers.

## 3. Commencement of Salary Entitlement

### a. Substitutes Originally Granted Regular Payroll Status

Entitlement to salary on assignment as a long-term per diem substitute begins on the date actual and personal service commences following approval to cover the vacancy on this basis. When long-term per diem substitute service through the end of a spring term is followed, without actual break in service, by regular substitute or regularly appointed service from the start of the following fall term, the employee is entitled to salary as from September 1 regardless of the actual date in September on which the fall term begins.



CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK

# Regulation of the Chancellor

Category: PEDAGOGICAL PERSONNEL  
 Subject: LONG-TERM PER DIEM SUBSTITUTE ON R740 PAYROLL

No.: C-525  
 Page: 3 of 3  
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## b. Substitutes Granted Regular Payroll Status After Service Commences

When, as more fully set forth in subdivision 2d of Regulation C-520, a substitute who was originally engaged to cover a vacancy which at the time did not qualify for regular payroll status is granted regular payroll status at a later date on account of subsequent developments, salary adjustments are made from the date the budget line was available to permit payment of the substitute from the regular payroll.

## 4. Termination of Salary Entitlement

Except as otherwise provided for absence, non-attendance and pro rata summer vacation pay, entitlement to salary as a long-term per diem substitute ceases at the end of the term or sooner if long-term per diem substitute service is terminated before the end of the term. Regular payroll status must be terminated after fifteen (15) consecutive or nonconsecutive days of absence without pay effective as of the calendar day immediately following the last day for which the employee was entitled to full pay as a regular payroll per diem substitute. When regular payroll status terminates in this manner, the former regular payroll per diem substitute reverts to occasional per diem status from the effective date of the change. No salary is due for absence without authorization.

## 5. Salary Deduction for Absence

Deductions from salary as a long-term per diem substitute on account of absence excused without pay are made in the manner prescribed by Regulation C-505.4 for regularly appointed teachers. When, in accordance with subdivision 4 above, a long-term per diem substitute reverts to occasional per diem status, no long-term per diem substitute pay is due beginning with the date of reversion.

## 6. Vacation Pay

One who serves as a long-term per diem substitute during the fall term receives a proration of the salary due for the summer month of July following that fall term. One who serves as a long-term per diem substitute during the spring term receives a proration of the salary due for the summer month of August following that spring term. Summer vacation pay is calculated on the basis of one-fifth (1/5) of the salary due for the appropriate summer month for each month or major fraction of a month of service as a long-term per diem substitute. Since duplicate salary may not be paid, there is no entitlement to long-term per diem substitute summer vacation pay covering any period for which the employee is entitled to salary under regular appointment.

# EXHIBIT “5”

Grievant's Address: 164 West 147<sup>th</sup> St Apt 2D

New York, NY 10039

Grievant's Phone Number: (212) 562-1653

Date: 12/15/2015

162410

M59848

Lawrence Becker

Acting Chief Executive Officer

Division of Human Resources

65 Court Street

Brooklyn, NY 11201

Dear Mr. Becker:

Pursuant to the terms enumerated under Article 11 of the Collective Bargaining Agreement covering Day-To-Day Substitute Teachers, I request a conference to discuss the following complaint:

I have been covering the same assignment since April 2012 to the present. I have never been made a regular sub and have only been paid as a per diem the entire time.

The above is a violation of Articles 3, 5, and 11.

As a remedy I request all monies owed plus interest and to be made whole in all ways.

I shall be accompanied to this conference by a representative from the UFT Manhattan Borough Office.

Grievant's Signature: AK

Grievant's Name: Konteye, Amadou

File/EIS #: 2595157

School: M499 District: 05

Submitted by: Nick Skrutz

Case#: DD-004-M59848 AKONTEYE@SCHOOLS.NYC.GOV

# EXHIBIT “6”

**APPEAL TO THE CHIEF EXECUTIVE OFFICER FOR AMADOU KONTEYE,**  
**A SUBSTITUTE TEACHER AT M499, DISTRICT 05, FILE #2595157**  
**OLR # 162410, UFT #M59848**

The conference was held on March 1, 2016

PRESENT:            Amadou Konteye        Grievant  
                      John Marvul            UFT Representative

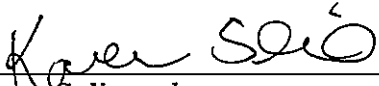
GRIEVANCE:        The grievant claims he was covering the same assignment from April 2012 to February 12, 2016. He was paid "O" status instead of "Q" status. The UFT states this is a violation of Articles 3, 5 and 11. The grievant would like to be paid the difference between the "O" and "Q" status.

FINDINGS:         This grievance was filed on 12/15/15. Article 22B3 of the UFT Agreement states that "the grievance shall be filed within a reasonable time not to exceed three months after the grievant has knowledge of the act or condition which is the basis of the complaint." This grievance did not meet the aforementioned criteria. Therefore, it must be considered untimely in part for the period 4/2012 through 6/26/2015. The grievance is sustained from 9/8/15 through 2/12/16. The principal confirmed that the grievant worked in the vacancy during this time.

This grievance is denied in part and sustained in part.

Respectfully submitted,  
Robin Kittrell  
Chief Executive Officer's Representative

APPROVED:

  
\_\_\_\_\_  
Karen Solimando,  
(As designee for Lawrence Becker,  
Chief Executive Officer, Division of Human Resources)

  
\_\_\_\_\_  
Date

RK

# EXHIBIT “7”

PEDAGOGIC/SCHOOL-BASED PAYROLL, 65 Court Street 14th Fl, Brooklyn, NY 11201

## NOTICE OF SALARY ADJUSTMENT

[illegible]

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Department of  
Education

DIVISION OF FINANCIAL OPERATIONS  
PEDAGOGIC/SCHOOL-BASED PAYROLL, 65 Court Street – 14th Fl, Brooklyn, NY 11201

## NOTICE OF SALARY ADJUSTMENT

### INACTIVE AND TIMEKEEPING

<b>NAME:</b> AMADOU KONTEYE		<b>FILE NUMBER:</b> 2595157	<b>EMPL#:</b>	<b>DATE:</b> 6/13/2016
<b>TITLE:</b> TEACHER		<b>DISTRICT/SCHOOL:</b> 05M499	<b>PREPARED BY:</b> PATRICIA LAU	<b>CONTACT#:</b> 718-935-4873

#### INACTIVE AND TIMEKEEPING ADJUSTMENTS

	# OF MONTHS CREDITED	FACTOR CODE*	FACTOR	SALARY CODE	ANNUAL SALARY	GROSS VAC. ADJUSTMENT	NOTES:
<b>SUMMER VACATION - INACTIVE ADJUSTMENTS</b>	1- 5			RA1A	\$56,104.00	\$4,675.33	2015-2016 VACATION PAY CODE 86
	2-						
	3-						
	4-						

\* FACTOR CODE is the year of the summer entitlement and A, B, C, or D. Leave FACTOR CODE field blank for 1/5 adjustments.

A = Teachers, Attendance Teachers, Lab Specialists and Educational Paras

B = Guidance Counselors, Secretaries, Psychologists and Social Workers,

C = Principals, Asst. Principals, Supervisors, and Psychiatrists

D = Adult Education Teachers

	# OF DAYS ENTITLED	SALARY CODE	ANNUAL SALARY	TOTAL PAYMENT	FIRST INSTALLMENT	SECOND INSTALLMENT	THIRD INSTALLMENT	NOTES:
<b>TERMINATION PAY (C.A.R.)</b>	2.5	RA1A	\$56,104.00	\$701.30				TRM PAY CODE 06
	PAY WITH CURRENT ADJUSTMENT? (ENTER A "Y"):							
	DATE OF PAYMENT:							

	# OF MONTHS ENTITLED	SALARY CODE	ANNUAL SALARY	TOTAL PAYMENT	FIRST INSTALLMENT	SECOND INSTALLMENT	THIRD INSTALLMENT	NOTES:
<b>FORFEITED SABBATICAL</b>								
	PAY WITH CURRENT ADJUSTMENT? (ENTER A "Y"):							
	DATE OF PAYMENT:							

	# OF DAYS TO DEDUCT	RATE CODE (TR or SY)	CONTRACT DATE	RATE	TOTAL DEDUCTIONS	NOTES:
<b>RELIGIOUS OBSERVANCE</b>	1 -					
	2 -					
	3 -					

	DAYS	HOURS	MINUTES	CONTRACT DATE	ANNUAL SALARY	TOTAL DEDUCTIONS	NOTES:
<b>DEDUCTIBLE ABSENCES</b>	1 -						
	2 -						
	3 -						

	# OF PREPS ENTITLED	CONTRACT DATE	RATE	TOTAL PAYMENT	NOTES:
<b>PREP PAYMENT</b>	1 -				
	2 -				
	3 -				

<b>CHECK DATE:</b>		<b>SUPP# :</b>		<b>TOTAL AMOUNT DUE</b>	<b>\$5,376.63</b>
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